

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEBRUARY 13, 1991

Peter Ploch, P.E.
Waste Engineering and Enforcement Division
Connecticut Department of Environmental Protection
165 Capitol Avenue
Hartford, CT 06106

Dear Mr. Ploch:

This letter is in response to your December 28, 1990 request for a determination on whether nickel-cadmium batteries handled by Alcad Inc., of North Haven, CT, are hazardous wastes subject to regulation under the Resource Conservation and Recovery Act.

Under the federal hazardous waste regulations, there are distinctions between used batteries, unused batteries, and partially reclaimed batteries (those that have been reclaimed but must be reclaimed further before processing is complete).

Unused batteries have the same status as other commercial chemical products - i.e., they are solid wastes when they are to be disposed, or when they will be recycled in ways that differ from their normal use. If they are intended to be used as batteries, however, or if they will be reclaimed, they are products and not solid wastes. (See 40 CFR 261.2, and 50 FR 14219, April 11, 1985.)

Used batteries are classified as spent materials, and are solid wastes when reclaimed. (See 40 CFR 261.2.)

Partially reclaimed used batteries may or may not be solid wastes (see the discussion at 50 FR 634, January 4, 1985). There is a variance procedure in the regulations at 40 CFR 260.30(c) and 260.31(c) for facilities that claim their partially-recovered materials are no longer solid wastes.

EPA Regions typically are better able to assist states in determining when a material is a solid waste, since they can visit the facility if necessary, and provide assistance in making site-specific judgments based on the exchange of detailed information between your offices. Thus, we suggest you contact Gerald Sotolongo, Chief of the Connecticut Waste Regulation Section in Region 1, at (617) 573-9680, for assistance in determining the status of the battery materials at the Alcad facility. If you have general questions about the federal definition of solid waste as it applies to batteries, please feel free to contact Becky Cuthbertson of my staff at (202) 475-8551.

Sincerely,

Sylvia Lowrance, Director
Office of Solid Waste

cc: Region 1

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

December 28, 1990

United States Environmental Protection Agency
Office of Solid Waste and Emergency Response,
05-300
401 M Street South West
Washington, D.C. 20460

Attn: Emily Roth

Dear Ms. Roth:

On September 25, 1990, the Connecticut Department of Environmental Protection, Waste Engineering and Enforcement Division conducted an inspection of Alcad Inc., North Haven, Connecticut. This facility is involved in the refurbishment of nickel/cadmium and lead/acid batteries. A copy of inspection report is enclosed for your reference.

As a result of the inspection, questions have come up as to whether or not some on-site wastes have to be handled as hazardous waste. The wastes in question are nickel/cadmium batteries which are damaged, have failed load testing after refurbishment or can no longer hold a charge (see page two of the inspection report).

Alcad has submitted documentation (including a copy of a letter from you to Lynn Bergenson at Fox, Weinberg & Bennett) contending that these batteries are not hazardous waste (copies of Alcad's documentation are enclosed). However, I do not believe that Alcad fully addresses the issue. Your letter indicates that if the batteries can no longer be used for the purpose for which they were intended, they are considered spent. According to 40 CFR 261.2(c)(3), spent materials are solids wastes when reclaimed. The batteries are not excluded from regulation as a solid waste under 40 CFR 261.4(a), nor are they excluded from regulation as a hazardous waste under 40 CFR 261.4(b). Therefore, I feel a hazardous waste determination must be made on the batteries to determine if they exhibit any of the characteristics of hazardous waste identified in 40 CFR 261 Subpart C, especially the characteristic of EP toxicity. If the batteries are not characteristically hazardous, then they can be disposed of as solid waste.

If my interpretation of the regulations is not correct, please provide a clarification. If you have any questions or need any additional information, please contact me at 203-566-8256.

Very truly yours,

FaxBack # 11584

Peter M. Ploch, P.E.
Waste Engineering and Enforcement Division